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5 Attorneys for Plaintiff
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 VIRGINIA PEREZ, individually,
11 and on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 MAID BRIGADE, INC., a
Delaware Corporation, and BMJ
16 LLC, a California Limited Liability
Company,

17 Defendants.
18
19

Case No. C 07-3473 SI

**DECLARATION OF ALAN HARRIS
IN SUPPORT OF PLAINTIFF'S
MOTION FOR AWARD OF
ATTORNEY'S FEES AND
REIMBURSEMENT OF COSTS**

Date: October 24, 2008

Time: 9:00 a.m.

Dep't: 10

Assigned to Hon. Susan Illston

20 ALAN HARRIS declares under penalty of perjury as follows:

21 1. I am a member in good standing of the State Bar of California and am one
22 of the attorneys for Plaintiff in the above-captioned action. I make this Declaration in
23 Support of Plaintiff's Motion for Award of Attorney's Fees and Reimbursement of
24 Costs. If sworn as a witness, I could competently testify to each and every fact set forth
25 herein from my own personal knowledge.

26 2. I have been and am licensed as an attorney, first in Illinois (1974) and later
27 in California (1989). I am a graduate of the University of Illinois (A.B. 1970; J.D.
28 1974). After graduation from law school in January 1974, I was hired as a litigation

1 associate at a plaintiffs' antitrust boutique in Chicago, Illinois: Freeman, Freeman &
 2 Salzman. I became a partner in that firm in 1980, and I started my own practice in 1982.
 3 I have represented plaintiffs in complex business litigation for over thirty-four years.
 4 E.g., Illinois v. Ill. Brick Co., Inc., 431 U.S. 720 (1977); In re My Left Hook, LLC, 129
 5 Fed. Appx. 352 (9th Cir. 2005); Gregory v. SCIE, LLC, 317 F.3d 1050 (9th Cir. 2003);
 6 In re Blue Coal Corp., 986 F.2d 687 (3d Cir. 1993); In re Blue Coal Corp., 206 B.R. 730
 7 (M.D. Pa. 1997); U.S. v. Gleneagles Inv. Co., Inc., 584 F. Supp. 671, 689 (M.D. Pa.
 8 1984), aff'd. in part & vacated in part, and remanded sub. nom. U.S. v. Tabor Ct. Realty
 9 Corp. 803 F.2d 1288 (3d Cir. 1986), cert. den. sub. nom. McClellan Realty Co. v. U.S.
 10 483 U.S. 1005 (1987); In re Uranium Antitrust Litig., 503 F. Supp. 33 (N.D. Ill. 1981);
 11 In re Grand Jury, 469 F. Supp. 666 (M.D. Pa. 1980); In re Anthracite Coal Antitrust
 12 Litig., 82 F.R.D. 364 (M.D. Pa. 1979); In re Folding Carton Antitrust Litig., 83 F.R.D.
 13 251 (N.D. Ill. 1978); In re Anthracite Coal Antitrust Litig., 78 F.R.D. 709 (M.D. Pa.
 14 1978); In re Masterkey Antitrust Litig., 1977 U.S. Dist. LEXIS 12948 (D. Conn. 1977)
 15 (jury trial for plaintiffs); A. Cherney Disposal Co. v. Chicago & Suburban Refuse
 16 Disposal Corp., 68 F.R.D. 383 (N.D. Ill. 1975); In re Cement-Concrete Block, Chicago
 17 Area, Grand Jury Proceedings, 381 F.Supp. 1108 (N.D. Ill. 1974); Lisa Frank, Inc. v.
 18 Brown, 2006 Westlaw 1237277 (Cal. Ct. App. 2006); Parmet v. Lapin, 2004 Cal. App.
 19 Unpub. LEXIS 5217 (June 1, 2004). I have represented employees in numerous disputes
 20 concerning their receipt of pay in connection with their employment, both before the
 21 State of California Division of Labor Standards Enforcement and in state and federal
 22 courts in California. E.g., Tremblay v. Chevron Stations, Inc., 2008 Westlaw 2020514
 23 (N.D. Cal. May 8, 2008) (certification of collective action); Hoffman v. Uncle P Prods.,
 24 2008 Cal. App. Unpub. LEXIS 3609 (three-year statute of limitations applies to section
 25 203 claims for continuing wages); Bithell v. E. P. Management Services, LP, 2007
 26 Westlaw 4216854 (Cal. Ct. App. 2007) (sustaining class settlement of entertainment-
 27 industry employees' section 203 and 226 claims against entertainment-industry "payroll
 28 companies" and studios); DuPont v. Avalon Hollywood Servs., Inc., 2007 Westlaw

93386 (Cal. App. 2007); Gregory v. Superior Court, 2004 Westlaw 2786357 (Cal. Ct. App. 2004) (employee of entertainment-industry payroll company not subject to arbitration of dispute under collective bargaining agreement). The undersigned has been appointed lead class counsel in many settled class actions, e.g., Kang v. Albertson's, Inc., United States District Court for the Central District of California Case No. 2:07-CV-00894-CAS-FFM (\$6,637,500 settlement of labor-law claims); Tremblay v. Chevron Stations, Inc., United States District Court for the Northern District of California, Case No. CV 07-6009 EDL (\$4,500,000 settlement of labor-law claims); Jacobs v. CSAA Inter Insurance Bureau, United States District Court for the Northern District of California, Case No. CV 07-00362 MHP (\$850,000 settlement of labor-law claims); Doty v. Costco Wholesale Corp., United States District Court for the Central District of California Case No. CV 05-3241 FMC (JWJx) (\$7,500,000 distributed to class members for FLSA and California Labor Code section 203 and 226 violations); Agatep v. Exxon Mobil Corporation, United States District Court, Central District of California No. CV 05-2342 GAF (\$1,500,000 settlement on behalf of service-station employees in California); Alfano v. International Coffee & Tea, LLC, United States District Court for the Central District of California Case No. CV 04-8996 SVW (CWx) (FLSA and California Labor Code section 226, 510. and 1194 case); Jenne v. On Stage Audio Corporation, United States District Court for the Central District of California Case No. CV 04-2045 CAS (PJWx) (FLSA and California Labor Code section 203 violations); Hansen v. Advanced Tech Security Services, Inc., Los Angeles Superior Court, Case No: BC 367175 (\$1,050,000 settlement of labor-law claims); Ross v. Human Resources, Inc., Los Angeles Superior Court, Case Number BC 351506 (California Labor Code section 203 case); Harrington v. Manpay, LLC, Los Angeles Superior Court No. BC 312171 (\$1,000,000 distributed to class members in a section 510 and section 1194 case); Brackett v. Saatchi & Saatchi, Los Angeles Superior Court Case No. BC 298728 (over \$170,000 distributed to class members in an FLSA and section 203 case); Readmond v. Straw Dogs, Inc., Los Angeles Superior Court No. BC257394 (over \$100,000 distributed

1 to class members in a section 203 case); Greenberg v. EP Management Services, LP, Los
2 Angeles Superior Court Case No. BC 237787 (\$5,348,000 settlement of claims under
3 sections 203 and 226 of California Labor Code); Angel Paws, Inc. v. Avalon Payroll
4 Servs., Inc., Los Angeles Superior Court No. BC 188982 (over \$450,000 distributed to
5 class members in a section 203 case); Saunders v. Metro Image Group, San Diego
6 Superior Court Case No. GIC 809753 (California Labor Code section 203 case);
7 Stratford v. Citicorp West FSB, Monterrey Superior Court Case No. M 81026 (\$950,000
8 settlement of labor-law claims). The majority of the foregoing cases were undertaken on
9 a contingent-fee basis, and Harris & Ruble has sufficient financial resources to engage in
10 that sort of practice.

11 3. During litigation of this matter, Harris & Ruble secured a \$90,000
12 settlement on behalf of Plaintiff and Members of the Class for payment of unpaid
13 compensation for missed rest breaks and meal breaks under the California Labor Code,
14 as well as for damages owing on account of unpaid overtime and pay-stub violations.
15 The settlement will result in the payment of overdue wages to approximately one-
16 hundred employees. The settlement also provides that Defendant pay civil penalties to
17 the California Labor and Workforce Development Agency of \$2,500.

18 4. The initial investigation of the law and the development of facts began in
19 mid-2007. Attached hereto as Exhibit 1 are detailed records of the time spent by Harris
20 & Ruble in initiating the case, discovery, negotiation of the settlement, and law-and-
21 motion practice. Attached hereto as Exhibit 2 are detailed records of the to-date claims-
22 administration fees and expenses. With respect to attorney's fees, approximately 230
23 hours of attorney work were required, resulting in a lodestar of \$126,536. The mixed
24 hourly rate for these services is \$548. As discussed in detail in the Memorandum of
25 Points and Authorities in Support of Plaintiff's Motion for Award of Attorney's Fees and
26 Reimbursement of Costs, filed and served herewith, Harris & Ruble seeks
27 reimbursement of attorney's fees and costs in the amount of \$30,000, or 30% of the
28 Settlement Fund, as well as \$9,000 plus costs for claims-administration fees and

1 expenses. These amounts will include compensation for all additional work in this case,
2 including appearing at the hearing for final approval of the settlement, administering the
3 still-open Claim Period, dealing with what should be dozens of inquiries from Class
4 Members, processing valid Claim Forms, and disbursing individual settlement amounts
5 to Claimants.

6 5. During the course of this case, the following employees of Harris & Ruble
7 made substantial contributions:

8 a. Alan Harris. Alan Harris is a graduate of the University of Illinois
9 (AB 1970, JD 1974). He is a member of the bars of Illinois (1974) and California
10 (1989). In this matter, Mr. Harris spent approximately 85 hours in litigation and
11 toward generating a settlement fund. As detailed in the Declaration of Peter D.
12 Zeughauser, attached as Exhibit 3 hereto, the market hourly rate for these services
13 is \$725.

14 b. David Zelenski is a graduate of Reed College (BA, 1999) and the
15 University of Southern California (JD 2003) (law review). He is a member of the
16 California bar (June 28, 2004), and his law-school Note, Talent Agents, Personal
17 Managers, and Their Conflicts in the New Hollywood, 76 S. Cal. L. Rev. 979
18 (2003), has been cited by the California Supreme Court in Marathon
19 Entertainment, Inc. v. Blasi, 42 Cal. 4th 974 (2008). In this matter, Mr. Zelenski
20 spent 50.3 hours in litigation. As supported by the Zeughauser Declaration, the
21 market hourly rate for the services of Mr. Zelenski is \$390.

22 c. Abigail Treanor is a graduate of the University of Southern California
23 (BA, 2000) and the University of California, Los Angeles (JD 2003). She is a
24 member of the California bar (December 2, 2003). Ms. Treanor spent 1.10 hours
25 in litigation of this matter and toward generating the settlement fund. As
26 supported by the Zeughauser Declaration, the market rate for the services of Ms.
27 Treanor is \$390.

28 d. Jonathan Ricasa is a graduate of the University of California, Los

1 Angeles (BA 1997) and the University of Southern California (JD 2001). He is a
2 member of the California bar (December 9, 2002). Mr. Ricasa spent .1 hours in
3 litigation of this matter. As supported by the Zeughauser Declaration, the market
4 rate for the services of Mr. Ricasa is \$430.

5 e. Lisa Owen is a graduate of Northeast Missouri State University (BS
6 1996) and the University of Kansas (JD 1999). She is a member of the bars of
7 Kansas (September 24, 1999) and California (June 6, 2000). In this matter, Ms.
8 Owen spent 4.8 hours in litigation of this matter. As supported by the Zeughauser
9 Declaration, the market rate for the services of Ms. Owen is \$500.

10 f. Matthew Kavanaugh is a graduate of Emerson College (BA 2000) and
11 Southwestern Law School (JD 2005). In this matter, Mr. Kavanaugh spent .20
12 hours in litigation of this matter. As supported by the Zeughauser Declaration, the
13 market rate for the services of Mr. Kavanaugh is \$320.

14 g. David S. Harris is a graduate of the University of Colorado (BS 1994)
15 and the University of San Francisco (JD 2001). After graduation, he became a
16 litigation associate, first at Brobeck, Phleger, & Harrison, LLP, then at Morgan
17 Lewis & Bockius. In 2006, Mr. Harris commenced his own practice. In this
18 matter, Mr. Harris spent 80.30 hours in litigation of this matter. The market rate
19 for the services of Mr. Harris is \$500.

20 h. Dennis Bjorklund is a graduate of the California State University at
21 San Bernardino (BA 1985). In this matter, Mr. Bjorklund spent 7.30 hours
22 providing services. A reasonable hourly rate for his services is \$210.

23 i. Kathryn Abrams is a graduate of Wayne State University (JD 2004)
24 and is a member of the bar of the State of Michigan. She is presently studying for
25 the California bar. In this matter, Ms. Abrams spent 1.20 hours providing
26 services. A reasonable hourly rate for her services is \$200.

27 6. It is my practice and the policy of Harris & Ruble that all employees record
28 their professional time on a contemporaneous basis. The recitation of professional time

1 and expenses in this Declaration is derived from contemporaneously maintained records.
2 I regularly review the time and expense records of all employees. I have reviewed all of
3 the records attached as Exhibit 1, and I believe them to accurately yet conservatively
4 represent the time productively and necessarily spent in the prosecution of this case. In
5 connection with the process of administering Harris & Ruble, I have retained the
6 services of an expert in the field, Peter D. Zeughauser, whose Declaration is attached
7 hereto as Exhibit 3. The hourly rates charged by Harris & Ruble are based on Mr.
8 Zeughauser's expert opinion and on my own understanding of the market rates in Los
9 Angeles, California.

10 7. In this case, Harris & Ruble successfully undertook to secure back wages
11 owing to current and former hourly employees of Defendants Maid Brigade, Inc. and
12 BMJ LLC.

13 8. As described in the accompanying Memorandum of Points and Authorities
14 in Support of Plaintiff's Motion for Award of Attorneys Fees and Reimbursement of
15 Costs, class certification presented a tremendous challenge in this case. For instance, the
16 law with regard to whether sections 226 and 226.7 of the California Labor Code was and
17 is unsettled. Even were Plaintiff to succeed in achieving certification of a class or
18 subclasses, there would be substantial hurdles to overcome before securing recovery.
19 With respect to the issues involving section 226 violations, Superior Court decisions
20 after Cicairos v. Summit Logistics, Inc., 133 Cal. App. 4th 949 (2005), have narrowly
21 construed the Cicairos holding and found that, in other cases, pay stubs that were not as
22 confusing as those in Cicairos were in substantial compliance with the statutory
23 requirements expressed in section 226. Based on my experience in other cases, a holding
24 that the pay stubs generated by Defendants were in substantial compliance with state law
25 was certainly within the realm of possibility. In such a case, the Class might have no
26 recovery at all with regard to the section 226 issues. Similarly, based on my
27 understanding, courts are often loathe to grant class certification in meal-and-rest-break
28 cases. See, e.g., Brinker v. Superior Court, 2008 Cal. App. LEXIS 1138 at *31-71 (filed

1 July 22, 2008) (vacating a class-certification order by explaining that whether employees
2 have been denied the rest and meal breaks to which they were entitled or whether they
3 voluntarily chose not to take them was a highly individualized inquiry). Accordingly,
4 from counsel's viewpoint, this case was extremely risky, with a substantial possibility of
5 years of work and no recovery whatsoever.

6 9. Notice was mailed out pursuant to the terms specified in the Stipulation of
7 Settlement. Attached hereto as Exhibit 4 is a true and correct copy of the Notice of
8 Pendency of Class Action that was mailed to Class Members. As of August 15, 2008, no
9 objections to the terms of the Stipulation of Settlement have been made.

10 I have read the foregoing, and the facts set forth therein are true of my own
11 personal knowledge. Executed August 15, 2008, in the County of Los Angeles, State of
12 California.

13 /s/

14 Alan Harris

PROOF OF SERVICE

I am an attorney for Plaintiff herein, over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 5455 Wilshire Boulevard, Suite 1800, Los Angeles, California 90036. On August 15, 2008, I served the within document(s): **DECLARATION OF ALAN HARRIS IN SUPPORT OF PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES AND REIMBURSEMENT OF COSTS.**

I caused such envelope to be delivered by hand in person to:

N/A

I caused such to be delivered via the Court's CM/ECF System:

James Bowles
jbowles@hillfarrer.com
docket@hhillfarrer.com
lforte@hillfarrer.com
smcloughlin@hillfarrer.com

Michelle Johnson
michelle.johnson@nelsonmullins.com

Patrick Macias
pmacias@rjlawllp.com

Edward McLoughlin
smcloughlin@hillfarrer.com
avillar@hillfarrer.com
docket@hillfarrer.com

Daniel Shea
daniel.shea@nelsonmullins.com

I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under that practice, the document(s) would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business, addressed as follows:

N/A

I declare under penalty of perjury that the above is true and correct. Executed on August 15, 2008, at Los Angeles, California.

/s/

David Zelenski

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